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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CARLOS SAAVEDRA VASQUEZ, Defendant.	Case No. 08CR0302-JLS BRIEF IN SUPPORT OF DEFENSE OPPOSITION TO MOTION FOR VIDEOTAPED DEPOSITION AND VOLUNTARY DEPORTATION OF MATERIAL WITNESS Date: March 6, 2008 Time: 3:45 p.m.

Defendant, CARLOS SAAVEDRA, by and through his counsel of record, Mark F. Adams hereby submits, at this Court's direction, this additional brief in support of his position that material witness, Nuria Christina Ramirez, should not be released until her trial and/or motion hearing testimony can be adequately preserved consistent with Mr. Saavedra's right to the effective assistance of counsel. Further, Mr. Saavedra remains convinced that his rights to confront and to cross-examine this witness can not be adequately and meaningfully acquitted without the physical presence of the witness in court before the trier of fact. In support of these facts, Mr. Saavedra hereby incorporates as though set forth fully herein, his reply and opposition to the motion for videotaped deposition filed on February 14, 2008 as docket entry 17, co-defendant's objection to the release of the material witness filed on February 15, 2008 as docket entry 18, the transcript of the hearing before the Magistrate Judge on February 22, 2008[1], including the objection of the Assistant United States Attorney responsible for the prosecution of this case, the defense notice of emergency appeal and request for *de novo* review, this brief, the Order for videotape depositions [sic] of the material witness, all files and records in this case docket, and on such other and further matters as shall be presented to this court prior to or at the time of the hearing.

STATEMENT OF THE CASE

On February 22, 2008, on the opposed motion of the material witness and following hearing before the Magistrate Judge assigned to the matter, an order was entered directing the deposition of the material witness, Nuria Christina Ramirez. The order directs the videotaping of a deposition and the release of the witness who will then presumably be removed to El Salvador, albeit with a subpoena to attend the trial, notwithstanding the fact that no trial date has been set.

DEFENSE OBJECTIONS

The defense objects and continues to object to this procedure for several reasons in addition to those set forth in the first reply and opposition.

First, the defense is firmly convinced from prior experience that the videotaped deposition is a poor and inadequate substitute for live witness testimony which absolutely does not assure Mr. Saavedra's rights to confront and cross-examine the witnesses against him.

Second, unless and until all discovery is received and defense investigation is completed, a deposition to preserve trial testimony is premature.

Third, unless and until final defense trial strategy is decided, meaningful cross-examination of this key witness is impossible. Counsel can only be prepared to examine this witness if the Court establishes a firm discovery cut off date, allows sufficient preparation time, and all counsel are in effect prepared to try the case.

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[1] A transcript of that hearing has been ordered and should be filed just prior to the hearing on this matter presently scheduled as indicated above on March 6, 2008.

Fourth, the improper collusion between agencies of the government and the material witness to create her unavailability is inappropriate and unnecessary given other alternatives such as directing the Department of Homeland Security to show cause why this witness cannot be released on conditions and allowed to remain within the United States prior to trial and/or the immediate setting of a trial date. The Order for the deposition does provide for a trial subpoena and travel documents to enter the United States for the trial, however, once the witness is released, there is no mechanism to enforce that subpoena beyond the borders of the United States. This provision of the Order is an empty gesture unlikely to ensure the presence of the witness at trial.

Fifth, this material witness' motion does not contain a sufficient showing of hardship nor an adequate demonstration of the legal standards established by *Torres Ruiz v. United States District Court,* 120 F.3d 933 (9th Cir., 1997) to warrant a deposition and her immediate release. Indeed, counsel for the material witness states only that "[h]er family is forced to suffer during her detention and she would like to return home". At the hearing before the Magistrate Judge, counsel for the witness, for the first time, notified the court and counsel that the witness has five children between the ages of three and fourteen years of age who are staying with unfamiliar family members and which is causing hardship for the witness. These statements simply do not ring true in view of the fact that, according to the discovery received so far, the witness, Nuria Christina Ramirez, left her home in Puerto la Libertad, El Salvador on November 16, 2007, traveled to the international border with the intention to illegally enter the United States, and travel to Pennsylvania to live, and presumably work, with her mother who was paying for her passage[2]. Clearly, this witness intended to reside in the United States illegally for some significant period of time, work here, and send money home to her children. When that plan was interrupted by her apprehension, her inability to send money to family admittedly must cause concern for the witness. However, alternatives exist to allow the witness to be immediately released in a manner allowing for her to remain within the United States pending trial.

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[2] Attached hereto as Exhibit A is the I-213 Record of Deportable/Inadmissible Alien prepared at the time of Ms. Ramirez' apprehension.

CONCLUSION

For the foregoing reasons, Mr. Saavedra respectfully requests that this Court vacate the Order for videotaped deposition and voluntary removal of the material witness Nuria Christina Ramirez.

Respectfully submitted,

Dated: March 3, 2008

/s/ Mark F. Adams
MARK F. ADAMS
Attorney for Carlos Saavedra

PROOF OF SERVICE

I, Mark F. Adams, do hereby state:

I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of eighteen years, and am not a party to the within action. My business address is 964 Fifth Avenue, Ste. 335, San Diego, California 92101.

On this 3rd day of March 2008, I served the within **BRIEF IN SUPPORT OF DEFENSE OPPOSITION TO MOTION FOR VIDEOTAPED DEPOSITION AND VOLUNTARY DEPORTATION OF MATERIAL WITNESSES** in Case No. 08CR0302-JLS electronically through the CM/ECF system for the Southern District of California on the United States Attorney's Office, specifically AUSA Paul L. Starita, a registered user of the CM/ECF system.

Additional parties served through the CM/ECF system are:

Linda A. King, Attorney for the Material Witnesses;

Carey D. Gorden Federal Defenders of San Diego, Inc., Attorneys for Co-Defendant Rivera Diaz.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED this day, March 3, 2008, at San Diego, California.

*/S/ Mark F. Adams*_________
MARK F. ADAMS